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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,762	08/03/2001	Justin M. Smyers	RPC 0575 PUS	8756
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KONSTANTINE J. DIAMOND 4010 E. 26TH STREET LOS ANGELES, CA 90023			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT 3727	PAPER NUMBER 15
DATE MAILED: 01/13/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,762

Applicant(s)

SMYERS ET AL.

Examiner

Stephen J. Castellano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 25-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 25-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 43 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 43 states that the at least one selected area comprises the corner, then states that the at least one area protrudes inwardly from the corner. Claim 43 seems to contradict itself by claiming that an element (the at least one selected area) both comprises the corner, yet also, protrudes inwardly from the corner.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 32-38 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by the admitted prior art in Fig. 1 and appropriate sections of the specification which describe prior art (the admitted prior art).

The admitted prior art discloses a stackable crate comprising:

a side wall integrally formed with a bottom surface, the side wall formed so that at least a portion of an opening in the crate at a first distance from the bottom surface (distance almost to top edge of side wall where the angle surface 18 is present) has a larger dimension than the bottom surface; and

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a drag rail (16) formed on the underside portion of the bottom surface and positioned inward of an outer peripheral support surface (shoulder 20) of the crate, the side wall formed so that a top surface of the side wall would contact the outer peripheral support surface of a like crate stacked thereon,

wherein a first portion (a substantially rectangular portion of thin horizontal dimension extending vertically from a first distance to a height 1 mm below the first distance) of an inner surface of the side wall at the first distance (the first distance is very close to the top edge and is horizontally adjacent to the drag rail of a crate stacked thereabove when stacked) from the bottom surface is formed to reduce the dimension of the crate opening (the inner surface at the first distance is tapered such that the opening dimension or width is greater than the bottom inside surface dimension and less than the crate opening dimension at the very top edge of the side wall) in at least one selected area relative to a second portion (a substantially rectangular portion of thin horizontal dimension extending vertically from a first distance to a height 1 mm above the first distance) of the inner surface of the side wall at the first distance so as to provide a tighter fit with a drag rail of the like crate stacked thereon.

Although Fig. 1 discloses only one crate, this one crate is inherently capable and is specifically constructed to stack with identical crates.

For claim 41, the first portion represents a first area in “the at least one selected area” and the second portion represents a second area which is different than the first area which is a portion of the inner peripheral surface adjacent the at least one selected area at the first distance from the bottom surface.

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Re claim 42, a generally rectangular inner peripheral surface at the first distance from the bottom surface is represented by the second portion and the first portion includes the at least one area.

Re claim 43, the at least one selected area is a portion of the inner peripheral side wall adjacent to another side wall such that the one selected area is considered to comprise the corner.

Claims 7, 9-11, 30, 44 and 47 are rejected under 35 U.S.C. 102(b) as being anticipated by Apps et al. ('532) (Apps 2).

Apps 2 discloses a stackable crate comprising:

a side wall integrally formed with a bottom surface; and

a drag rail (one of the rails at the bottom periphery of the crate, redoubt members 66, 68 and redoubt struts 70, 72) protruding from an underside portion of the bottom surface, the drag rail including a drag surface that is the lowermost surface of the crate, wherein an inner surface of the side wall is formed to position at least a portion (reinforcing posts 79) of the side wall over the drag rail.

For claims 9 and 11, the corner is defined such that it includes at least two reinforcing posts 79 and corresponding drag rails, wherein each reinforcing post extends over its corresponding drag rail. The contoured portion includes the two reinforcing posts 79, the posts extend over the drag rails, the contoured portion extends inwardly from the first side wall and the second side wall. The inner side wall surface of the first and second side walls is contoured at a lower surface of the corner so as to form the contoured portion. The contoured portion is considered to be a one-piece, single contoured portion.

For claim 10, Fig. 1 discloses that the side walls have fillets at their connection with the bottom surface forming an inwardly extending taper.

Re claim 47, the drag rails include corner portions.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 32-38 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art.

This rejection is made in the event that it is deemed that claims 1-4, 32-38 and 40-43 are not anticipated by the admitted prior art.

The admitted prior art discloses the invention except for the stacking of two crates. It would have been obvious to stack two crates in order to more efficiently use floor space by storing a plurality of crates in the space occupied by one crate.

Claims 1-6, 25-29, 32-38 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art in view of Wise.

Re claim 1, 32 and 35, the admitted prior art discloses the entire invention, but a modification can be made in view of the teachings of Wise. Wise teaches gussets 77, 79, 81, 83, 85, 87, 89 and 91 and corner gussets 84, 86, 88 and 90 with portions of all of these gussets being tapered to establish a first portion of an inner surface of the side wall at the first distance from the bottom surface is formed to reduce the dimension of the crate opening in at least one selected area relative to a second portion of the inner surface of the side wall at the first distance from the

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bottom surface so as to provide a tighter fit with a container stacked thereabove. It would have been obvious to modify the admitted prior art crate to provide a tighter fit with the drag rail of a like crate stacked thereon.

Re claims 5, 6 and 25-29, the admitted prior art discloses the invention except for the at least one selected area is entirely tapered rather having a portion without taper, a portion with reduced taper, or a portion angled less outwardly. Wise teaches a stackable crate with a side wall formed so that a portion of an opening at a first distance from the bottom surface (an upper wall portion) has a larger dimension than the bottom surface, wherein a portion of an inner surface of the side wall at the first distance from the bottom surface is formed to reduce the dimension of the crate opening in at least one selected area, the one selected area including tapered areas 77, 79, 81, 83, 85, 87, 89 and 91 and portions without taper between and circumferentially spaced from the tapered areas. The portions without taper are considered portions with reduced taper and portions angled less outwardly. Also consider the corners 55, 57, 59 and 61 have upper portions at the first distance from the bottom surface which include portions of reduced outward taper and portions angled less outwardly rather than zero taper. It would have been obvious to modify the crate of the admitted prior art to include the upper wall portion configuration of Wise in order to reinforce the upper edge of the crate's wall to prevent buckling which could cause crate alignment problems, stack instability and breakage or damage of crates and/or contents.

Claims 8 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 2 in view of Elvin-Jensen.

Apps 2 discloses the invention except for the variable radius blend. Elvin-Jensen teaches a variable radius blend (areas of no radius where wall is planar to areas where there is a radius)

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between portions near the middle of a side wall where the inner side wall surface meets the bottom surface and greater radii of portions near the corners that connect side walls where the inner side wall surface meets the bottom surface (see Fig. 1, 2, 3 and 9). It would have been obvious to add the variable radius blend in order to make manufacturing easier since the larger radii near corner portions improve the releasability of the corner portion from male molds and these larger radii corner portions reduce the trapping of dirt and debris in these corner portions to enhance hygiene and cleanliness.

Claims 9, 11 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 2 in view of the admitted prior art.

Re claims 9, 11 and 47, Apps 2 discloses the entire invention. The admitted prior art provides a drag rail which extends into the corners and the inner side wall surface of the first and second side walls is contoured at a lower surface of the corner so as to form a contoured portion extending inwardly from the first and second side walls over the drag rail. It would have been obvious to modify the drag rail structure of Apps to include at least one drag rail which extends into a corner as motivated by a need to reduce drag rail forces and wear on the drag rail by increasing its surface area and to modify the inner side wall surface at the corner to provide the contoured portion to reduce high stress concentration associated with non-contoured corner surfaces.

Re claims 45 and 46, Apps discloses drag rail portions that extend over a substantial portion of the length. It would be obvious in view of the single drag rail teaching of the admitted prior art to modify the drag rail portions to be replaced by a single drag rail extending along at least substantially the entire length of the side wall and parallel to the side wall.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Apps 2 in view of Wise.

Apps 2 discloses the invention except for the side wall being formed to reduce the dimension of the crate opening in at least one selected area. Wise teaches a stackable crate with a side wall formed so that a portion of an opening at a first distance from the bottom surface (an upper wall portion) has a larger dimension than the bottom surface, wherein a portion of an inner surface of the side wall at the first distance from the bottom surface is formed to reduce the dimension of the crate opening in at least one selected area, the one selected area including tapered areas 77, 79, 81, 83, 85, 87, 89 and 91 and portions without taper between and circumferentially spaced from the tapered areas. The portions without taper are considered portions with reduced taper and portions angled less outwardly. Also consider the corners 55, 57, 59 and 61 have upper portions at the first distance from the bottom surface which include portions of reduced outward taper and portions angled less outwardly rather than zero taper. It would have been obvious to modify the crate of Apps 2 to include the upper wall portion configuration including upper wall portions of the corners of Wise in order to reinforce the upper edge of the crate's wall to prevent buckling which could cause crate alignment problems, stack instability and breakage or damage of crates and/or contents.

Claims 34, 38 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art or (the admitted prior art in view of Wise) in view of Elvin-Jensen.

The admitted prior art discloses the invention except for the variable radius blend. Elvin-Jensen teaches a variable radius blend between portions near the middle of a side wall where the inner side wall surface meets the bottom surface and greater radii of portions near the corners

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that connect side walls where the inner side wall surface meets the bottom surface. It would have been obvious to add the variable radius blend in order to make manufacturing easier since the larger radii near corner portions improve the releasability of the corner portion from male molds and these larger radii corner portions reduce the trapping of dirt and debris in these corner portions to enhance hygiene and cleanliness.

Applicant's arguments with respect to claim 1-4, 9, 11, 32-39 and 40-47 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc